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CSM v. TCC

HIGH COURT MALAYA, KUALA LUMPUR
FAIZAH JAMALUDIN J
[JUDICIAL SEPARATION PETITION NO: 33-563-10-2015]
17 FEBRUARY 2023

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Abstract – *The court must look at the matrimonial assets accumulated by a husband-and-wife couple as one rather than segregate them into two categories: properties acquired jointly by both spouses and properties acquired solely by one spouse. Section 76(2)(aa) of the Law Reform (Marriage and Divorce) Act 1976 codifies the court's power to take into consideration the extent of the contributions made by the spouse who did not acquire the assets to the welfare of the family by looking after the home and caring for the family.*

C

D

FAMILY LAW: *Marriage – Judicial separation – Petition for judicial separation filed by wife against husband – Whether marriage had irretrievably broken down – Whether husband behaved in such way that wife could not reasonably be expected to live with him – Allegations that husband selfish and hot-tempered – Whether proven – Law Reform (Marriage and Divorce) Act 1976, s. 54(1)(b)*

E

FAMILY LAW: *Maintenance – Spousal maintenance – Petition for judicial separation filed by wife against husband – Claim for maintenance by wife – Whether wife had means to maintain herself – Needs of parties – Reasonable sum of maintenance payable by husband to wife*

F

FAMILY LAW: *Assets – Matrimonial assets – Petition for judicial separation filed by wife against husband – Claim for matrimonial assets by wife – Equality of division – Factors taken into account in dividing matrimonial assets – Financial contributions towards acquisition of properties – Expenses for benefit of family – Contributions to welfare of family – Duration of marriage – Law Reform (Marriage and Divorce) Act 1976, s. 76(2)*

G

FAMILY LAW: *Children – Maintenance – Petition for judicial separation filed by wife against husband – Claim for maintenance by wife for children – Whether father's primary duty to maintain children – Reasonable sum of maintenance for children*

H

This was a petition for judicial separation filed by the petitioner wife against the respondent husband under s. 64 of the Law Reform (Marriage and Divorce) Act 1976 ('LRA'). The petitioner was also seeking (i) a reasonable sum of monthly maintenance for herself; (ii) arrears in spousal maintenance from the time she left the house until November 2020 (61 months); (iii) payment of RM70,000 as ang pow for every Chinese New Year; (iv) a reasonable sum in monthly maintenance for the parties' two children, TJM and TJT, until they each complete their tertiary education and payment of

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all their expenses until the completion of their first degree; (v) for a portion of the assets between her and the respondent. The assets in question were substantial and amounted to more than a quarter billion ringgit. The petitioner was a housewife and had not been in gainful employment. The respondent's total net income after tax during the marriage (from 1997 until 2015) was RM51,175,966.13. The petitioner submitted that: (i) the respondent met her expenses over the years and had given her the sum of RM70,000 as ang pow every Chinese New Year; (ii) before she left the matrimonial home, she had the use of a Lexus 350 car valued at RM400,000, a credit card and spending money given to her by the respondent; (iii) the respondent paid all the household expenses and all her bills and he had also given her the use of two maids and a driver; and (iv) she also collected rentals monthly from two properties registered under her name, amounting to RM21,500 per month. It was also not disputed that when the petitioner left the matrimonial home, the petitioner had immovable properties in the sum of RM2,165,600 and cash in her bank account in the sum of RM1,038,002.38. The respondent, on the other hand, cross-petitioned for a dissolution of the marriage. The parties agreed that their marriage had irretrievably broken down. In her petition, the petitioner relied on the grounds under s. 54(1)(b) of the LRA to submit that the respondent had behaved in such a way that she could not reasonably be expected to live with him. According to the petitioner, the respondent was (i) hot-tempered, scolded her and the children and had even hit the children especially their eldest son, TJM; (ii) was a selfish person; (iii) had not shown much love and affection towards her and the children; (iv) was cruel to her in terms of denying her emotional support and intimacy; and (v) had not shown any respect towards her family members.

Held (ordering accordingly):

(1) A selfish or miserly man would not have given his wife properties and cash in such amounts. Contrary to the petitioner's pleaded case, she had admitted under cross-examination that the respondent had been generous to her up to the time she left the matrimonial home and she considered him to be a generous husband who had provided a comfortable life to both her and their children. Accordingly, the petitioner failed to prove that the respondent was a selfish person. Further, the petitioner did not provide any evidence in court to prove her allegation that the respondent was a hot-tempered person who scolded and hit their children, especially the eldest son, TJM. (paras 39, 41 & 42)

(2) The parties' marriage had irretrievably broken down. Although the petitioner failed to prove, on a balance of probabilities, her allegations of the respondent's unreasonable behaviour, after more than 20 days of observing both parties, particularly the stark differences in their personalities and characters and the palpable acrimony between them, the court found that they could not be reasonably expected to live with

A one another. As the petitioner failed to prove on a balance of probabilities her allegations of unreasonable behaviour against the respondent, no responsibility was allocated on either party for the breakdown of the marriage. The court granted the petitioner's petition for judicial separation. (paras 52-55)

B **(3)** Section 106(1) of the LRA stipulates that, except for dissolution of a marriage under ss. 51 and 52 of the LRA, a party can only file a petition for divorce after reference to a conciliatory body and that body had certified that it failed to reconcile the parties, unless it falls within any of the exceptions in paras. (i) to (vi) of s. 106. Dissolution of marriage C under s. 51 of the LRA is on the ground that one spouse had converted to Islam, and dissolution of marriage under s. 52 is by mutual consent through the filing of a joint petition for divorce. The respondent did not rely on any particular section of the LRA in his cross-petition for the dissolution of the marriage. It was clear that neither the petitioner nor D the respondent had converted to Islam and the cross-petition was not by mutual consent of the parties. Thus, the cross-petition for divorce could not fall within either ss. 51 or 52 of the LRA. In his cross-petition, the respondent did not plead any of the exceptions in s. 106(1). Neither did he seek dispensation from this court from reference to the marriage E tribunal under s. 106(vi) of the LRA prior to filing his cross-petition for divorce. For these reasons, the respondent's cross-petition for the dissolution of the marriage was dismissed. (paras 56-60)

(4) The petitioner's purchases and expenditures showed that the petitioner had the means to maintain herself, including going on overseas trips, F from the rentals that she received from their joint properties, the commissions she earned and the monthly maintenance that the respondent had paid her after she had left the matrimonial home in 2015. Accordingly, after taking into account the means and the needs of both the petitioner and the respondent and the amount itemised by the G petitioner as monthly expenses, a reasonable sum of maintenance payable by the respondent to the petitioner was RM20,000. The arrears of maintenance payable by the respondent to the petitioner was RM525,500. (paras 76 & 79-81)

(5) Paying of ang pow from a husband to a wife was understandable but not H necessary when a married couple are living together and celebrating Chinese New Year together. However, once the couple is judicially separated or divorced, live in separate homes and no longer celebrate Chinese New Year together, paying of ang pow for Chinese New Year by the husband to the wife is neither understandable nor necessary. I Accordingly, the petitioner's application for the respondent to continue paying her the sum of RM70,000 as ang pow for Chinese New Year after she had left the matrimonial home was dismissed. (para 84)

(6) Both TJM and TJT were pursuing their tertiary education. There was no issue about TJT's education or living expenses as he had been living with the respondent since his return from Canada. The respondent fully paid for TJT's upkeep and his education. In respect of the child maintenance for TJM, the respondent was ordered to pay the petitioner: (i) TJM's living expenses at the rate of RM5,000 per month and his university fees and rental at the rate of not more than AUD489 from August until the completion of his undergraduate degree; and (ii) the total amount arrears in child maintenance for the period from November 2015 to July 2020 in the sum of RM292,834.83. (paras 85 & 101)

(7) Pursuant to s. 76(2) of the LRA, in deciding on the division of the matrimonial assets between the petitioner and the respondent, the court was required to 'incline towards equality of division' after taking into consideration the factors in s. 76(2). The court took into account, the respondent's financial contributions towards the acquisition of the properties and the expenses for the benefit of the family, the plaintiff's contributions to the welfare of the family 'by looking after the home or caring for the family' and the duration of the marriage. The court divided the matrimonial assets between petitioner and the respondent, not half but as close to half. In doing so, this court did not divide each and every asset down the middle but instead strived towards equality of division of the couple's whole basket of assets – the division of all the assets in the basket was at the ratio of 44:56 for the petitioner and the respondent, respectively. (paras 136-139 & 141)

Case(s) referred to:

Ash v. Ash [1972] Fam 135 ***(refd)***
B v. B [1924] P 176 ***(refd)***
Baheerathy Arumugam v. V Gunaselan V Visvanathan [2013] 1 CLJ 954 HC ***(refd)***
CCKY v. CCT [2021] 5 CLJ 693 HC ***(refd)***
Celvambigai S Thirucelvam v. Pandian Subramaniam [2015] 6 CLJ 225 HC ***(refd)***
Dr Shameni Pillai PB Rajedran v. Dr S Arulselvam Sanggilly & Anor [2011] 6 CLJ 782 HC ***(refd)***
Hariram Jayaram v. Saraswathy Rajahram [1990] 1 CLJ 285; [1990] 2 CLJ (Rep) 103 HC ***(refd)***
Katz v. Katz [1972] 1 WLR 955 ***(refd)***
Manokaram Subramaniam v. Ranjid Kaur Nata Singh [2008] 6 CLJ 209 FC ***(refd)***
Nur Syarafina Sa'ari v. Kerajaan Malaysia & Ors [2019] 9 CLJ 246 HC ***(refd)***
Overseas Investment Pte Ltd v. Anthony William O'Brien & Anor [1988] 2 CLJ 238; [1988] 2 CLJ (Rep) 82 HC ***(refd)***
Parkunan Achulingam v. Kalaiyarasy Periasamy [2004] 7 CLJ 175 HC ***(refd)***
Poonageswari P Krishnan v. Bailand Govindaham [2019] 1 LNS 688 HC ***(refd)***
Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***
Shireen Chelliah Thiruchelvam v. Kanagasingam Kandiah; Sureshan Marcandan (Party Cited) (No 2) [2011] 1 LNS 1167 HC ***(refd)***
Sivanes Rajaratnam v. Usha Rani Subramaniam [2002] 3 CLJ 300 CA ***(refd)***
Yap Kim Lew v. Peh Thye Meng [2013] 1 CLJ 441 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 15(2)
Divorce and Matrimonial Proceedings Rules 1980, r. 67
Evidence Act 1950, ss. 101, 102
Law Reform (Marriage and Divorce) Act 1976, ss. 51, 52, 54(1)(b), 64, 65, 76(1), (2)(aa), (b), (5), 77(1)(b), 78, 92, 93(2), 106(1)(i), (ii), (iii), (iv), (v), (vi)
Law Reform (Marriage And Divorce) (Amendment) Act 2017, s. 95

Divorce Reform Act 1969 [UK], s. 2(1)(b)

For the petitioner - Balwant Singh Sidhu & Kelvinder Singh Sidhu; M/s Balwant Singh Sidhu & Co
For the respondent - Peter-Douglas Ling & Emilia Van Buerle; M/s Peter Ling & Co

Reported by Lina E

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] This is a petition for judicial separation ("JS") filed by the petitioner wife ("PW") against the respondent husband ("RH") under s. 64 of the Law Reform (Marriage and Divorce) Act 1976 ("LRA").

[2] PW and RH's marriage was registered under the LRA on 18 July 1997. They underwent a Chinese customary marriage earlier on 2 November 1996. There are two children of the marriage, TJM (born on 5 June 1997) and TJT (born on 3 June 1999).

[3] After 18 years of marriage, PW left the matrimonial home on 23 November 2015 without RH's knowledge. She took both children with her.

[4] PW had filed this JS petition against RH in the Kuala Lumpur High Court on 23 October 2015 – exactly a month prior to leaving the matrimonial home.

[5] The JS petition was served on RH on the same day PW left the matrimonial home with their children. The petition was served together with an *ex parte* interim injunction order dated 17 November 2015 freezing half of all RH's bank accounts. An *ad interim* injunction order was granted on 30 November 2015.

[6] On 24 June 2016, the High Court dismissed PW's application for an interim injunction and allowed RH's application to set aside the *ad interim* injunction order. On 27 June 2016, PW's appealed the High Court's decision to the Court of Appeal. She also applied for an *Erinford* injunction on an *ex parte* basis. The *ex parte Erinford* injunction was granted on 30 June 2016. After the *inter partes* hearing of the application, the High Court dismissed PW's application for the *Erinford* injunction on 8 August 2016.

[7] A consent order between PW and RH was recorded at the Court of Appeal on 28 October 2016, where it was ordered with the consent of the parties that half of the balance in seven of RH's bank accounts be frozen and that RH would maintain the sum of RM33 million in a fixed deposit at Public Bank Berhad pending the disposal of this JS petition.

Reliefs Sought

[8] In this JS petition, PW seeks an order of judicial separation. She is also seeking custody, care and control of TJM and TJT, a reasonable sum in monthly maintenance for both children until they each complete their tertiary education and payment of all their expenses until completion of their first degree.

[9] In addition, PW seeks a reasonable sum of monthly maintenance for herself and for a portion of the assets acquired by the parties during their marriage, divided in such proportion between her and RH as this court thinks just. The assets in question are substantial. As detailed in Part D of this judgment, the assets amount to more than a quarter billion ringgit.

[10] RH in his cross-petition seeks for a dissolution of the marriage. RH seeks for the division of assets and payments of maintenance in the sums detailed in his counsel's written submission filed in court after the conclusion of trial.

Issues For Determination

[11] The issues for a court's determination in a JS petition are similar to that in a divorce petition. They are:

(i) whether the marriage had irretrievably broken down and what are the facts that caused or led to the breakdown of the marriage;

(ii) maintenance for the spouse and the children; and

(iii) division of matrimonial assets.

[12] This court is empowered under the LRA to make ancillary orders relating to the custody of the children of a marriage when granting a decree of judicial separation or decree of divorce. It is also empowered to order payment of maintenance for the children.

[13] The custody and care of both children of the marriage is not an issue in this case, as both TJM and TJT are over 18 years of age.

[14] However, the maintenance of both children remains an issue to be decided because they are still pursuing their higher education. Section 95 of the LRA, as amended by the Law Reform (Marriage And Divorce) (Amendment) Act 2017 (the "2017 Amendment Act"), states that any order for maintenance of children shall expire when the child reaches the age of 18 years, or where the child is pursuing further or higher education or training, on the completion of such further or higher education or training, whichever is the later.

[15] The trial of this JS petition had proceeded over 28 non-consecutive days; first, before Nor Bee Ariffin J (later JCA) and thereafter, myself. One of the main issues in contention is the division of the quarter of a billion ringgit of assets – cash and non-cash, movable and immovable assets – acquired during the couple's marriage.

[16] Due to the substantial monetary value of these assets, I have in this judgment, pursuant to the discretion conferred under s. 15(2) of the Courts of Judicature Act 1964, have referred to the parties by their acronyms or as "PW" and "RH" respectively, so as not to lead to their identification. I have also not listed in full the addresses of the matrimonial home, the various properties in their joint names or in the names of PW or RH individually, and the name of companies in Malaysia and the British Virgin Islands of which RH and PW are shareholders, and the numbers of their various bank accounts.

Has The Marriage Irretrievably Broken Down?

[17] Both PW and RH agree that their marriage had irretrievably broken down. In considering PW's JS petition and RH's cross-petition for divorce, this court is required to inquire into the facts alleged as causing or leading to the breakdown of the marriage: see ss. 64 and 54 of the LRA; *Hariram Jayaram v. Saraswathy Rajahram* [1990] 1 CLJ 285; [1990] 2 CLJ (Rep) 103; [1990] 1 MLJ 114; ("*Hariram Jayaram*").

[18] Section 64 of the LRA states that the grounds and circumstances that a court shall have regard to in its inquiry into the facts, alleged as causing or leading to the breakdown of the marriage, in a JS petition is similar to that in a divorce petition. Section 64 reads:

> 64. Judicial Separation
>
> (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground and circumstances set out in s. 54 and that section shall, with the necessary modifications, apply in relation to such a petition as they apply in relation to a petition for divorce.

[19] The grounds and circumstances set out in s. 54(1) of the LRA, which a court shall have regard to in a JS petition are as follows:

(i) whether the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(ii) whether the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(iii) whether the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;

(iv) whether the parties to the marriage have lived apart for a continuous period of at least two years immediately preceding the presentation of the petition.

[20] In her JS petition, PW relies on the grounds under s. 54(1)(b) of the LRA. She pleads that RH had behaved in such a way that she cannot reasonably be expected to live with him.

[21] Under ss. 101 and 102 of the Evidence Act 1950, the burden of is on PW to prove her case on a balance of probabilities.

[22] Lim Beng Choon J in *Hariram Jayaram* in determining the scope and effect of s. 54(1)(b) had referred to a number of English cases as the phrase "cannot reasonably be expected to live with the respondent" also appears in English Divorce Reform Act 1969 ("DRA 1969"). Section 2(1)(b) of the DRA 1969, states:

> The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the court of one or more of the following facts, that is to say ... (b) that the respondent has behaved in such a way that the petitioner **cannot reasonably be expected to live with the respondent**. (emphasis added)

[23] His Lordship agreed with Bagnall J in *Ash v. Ash* [1972] Fam 135 that on the true construction of sub-s. 2(1)(b) of the DRA 1969, the word "petitioner" means the particular petitioner in the case under consideration and not an ordinary reasonable spouse looked at as a petitioner.

[24] On the question of what is the standard of behaviour to adopt in construing s. 54(1)(b) of the LRA, His Lordship cited with approval the test stated by Sir George Baker P in *Katz v. Katz* [1972] 1 WLR 955 at p. 960:

> The standard is that he must behave 'in such a way that the petitioner cannot reasonably be expected to live with [him]'. That is the test. *It is for the judge not the petitioner alone to decide whether the behaviour is sufficiently grave to fulfil that test, that is, to make it unreasonable to expect petitioner to endure it, to live with the respondent. Also it is for the judge to say whether the marriage has irretrievably broken down*. To that extent I agree with what Bagnall J said in *Ash v. Ash* [1972] Fam 135. The court must consider the effect of the behaviour on the particular petitioner and *ask the question is it established, not that she is tired of the respondent, or, colloquially, fed up with him, but that she cannot reasonably be expected to live with him*. In a sense it seems to me wrong to call it, as we are apt to do, unreasonable behaviour. *It is behaviour that causes the court to come to the conclusion that it is of such gravity that the wife cannot reasonably be expected to live with him*. (emphasis added)

[25] In *Ash v. Ash* [1972] Fam 135; [1972] 2 WLR 347, on the question of whether a petitioner can or cannot be reasonably be expected to live with a respondent, Bagnall J said:

> In order, therefore, to answer the question whether the petitioner can or cannot reasonably be expected to live with the respondent, in my judgment, *I have to consider not only the behaviour of the respondent as alleged*

A *and established in evidence, but the character, personality, disposition and behaviour of the petitioner. The general question may be expanded thus: can this petitioner, with his or her character and personality, with his or her faults and other attributes, good and bad, and having regard to his or her behaviour during the marriage, reasonably be expected to live with this respondent*? ... This conclusion seems to me to be consonant with what have been said to be the objects of the 1969
B legislation, which are not, in my view, simply to make divorce easier but, to quote from the *Law Commission's Reform of the Grounds of Divorce* (Cmnd. No. 3123) November 1966, p. 10, para. 15:

> ... (i) To buttress, rather than to undermine, the stability of marriage; and (ii) When, regrettably, a marriage has irretrievably
C broken down, to enable the empty legal shell to be destroyed with the maximum fairness, and the minimum bitterness, distress and humiliation. (emphasis added)

[26] Thus, this court, in deciding whether the marriage between PW and RH had irretrievably broken down, has to consider both RH's and PW's
D character, personality, disposition and behaviour and ask the question whether PW, with her character and personality, and having regard to her behaviour and RH's behaviour during the marriage, reasonably be expected to live with RH.

[27] PW pleads that RH's behaviour which she cannot reasonably be
E expected to live him, is that RH is hot-tempered – he scolds her and the children; he had hit the children, particularly their eldest son, TJM; he is a selfish person; he has not shown much love and affection towards her and the children; he is cruel to her in terms of denying her emotional support and intimacy; and he has not shown any respect towards her family members.

F **[28]** RH denies PW's allegations. Learned counsel for RH, Mr Peter Ling, submits that despite PW's numerous witness statements and oral testimony over many days of trial, she had failed to prove all her allegations.

Brief Facts

G **[29]** When PW and RH first met in 1994, she was an air stewardess with MAS and he was a stock-broker.

[30] PW left her job in MAS about six to nine months after they started dating. She then opened a beauty salon with an investment of RM50,000 from RH. Her beauty salon business was not successful and she closed it
H down about a year after opening it. Thereafter, PW did not work. She continued not to work during the course of their marriage until she left the matrimonial home in November 2015 with the children.

[31] RH works as a proprietary day trader at a licensed securities company
I in Malaysia. His fixed monthly income is RM10,000 per month, and he earns commissions from share trading as a PDT. It is from these commissions that he makes the bulk of his earnings. RH's total net income after tax during the marriage (from 1997 until 2015) was RM51,175,966.13.

[32] PW in her witness statement said that RH met her expenses over the years and has given her the sum of RM70,000 as ang pow every Chinese New Year. She said that before she left the matrimonial home, she had the use of a Lexus 350 car, valued at RM400,000, a credit card and spending money given to her by RH.

[33] PW said that RH paid all the household expenses and all her bills. He also gave her the use of two maids and a driver. PW described her lifestyle while living with RH in the matrimonial home as luxurious.

[34] PW said that she also collected rentals monthly from two properties in Valencia, Sungai Buloh, which were registered in both their names. In her witness statement, she said that total amount of rentals for both these properties in Valencia was RM21,500 per month and she had retained the rental sum collected for her own use.

[35] As an example of RH's alleged selfishness, PW cited an incident where RH scolded their younger TJT over a new school bag she had bought for him. The cost of the school bag was approximately RM100. During the trial RH explained that he disagreed with PW buying TJT a new school bag because his existing school bag was still in good condition. RH said he wanted to teach the children the value of money – that there was no reason to buy a new school bag when the old school bag was still in good condition. An excerpt of RH's testimony on the issue of the school bag is reproduced below:

RH	... Condition is good. What is the point you must buy a new bag again? My thinking is like that. Unless you use until the school bag spoil already, I buy for you is not a problem because one schoolbag the most 100 over ringgit. ... I want to the children the value of money. You must control. Not say, the problem is not, the question mark is not the money problem about what ... .

[36] My observation of RH and PW during the course of the trial is that PW is a physically attractive woman with a pretty face. She is seven years younger than RH – she was 23 and he was 30 when they first met. She is soft-spoken and appears to be gentle in character. She is not highly educated and is more comfortable speaking in Chinese and Bahasa Malaysia, than English. She loves to socialise with friends and family and regularly enters karaoke competitions. From the photographs of the many trophies that she had won, it can be concluded that she is good at singing and has taken part in many karaoke competitions.

[37] RH on the other hand is more reserved. He is not as physically attractive as PW and does not dress as stylishly as her. Like PW, he is not highly educated. He comes from a modest background. However, through the strength of his character, discipline and determination, he had managed to forge a career as a successful proprietary day trader. Through the commissions he had earned from the buying and selling of shares, particularly during KLSE "Super Bull Run" in the early 1990s, and his

investments in property, RH had managed to acquire immense monetary wealth during the course of the marriage – the division of which is the subject of this petition and cross-petition.

[38] From their demeanour and the way they answered the questions in court, I found them both to be truthful and honest. However, because of the stark differences in their character, personality and outlook in life, although they were not deliberately lying to this court, I found that "her truth" *ie*, what she perceives to be the correct way of behaving and bringing up their children is different from "his truth".

[39] I believed RH when he said he was angry about PW purchasing TJT the new school bag because he wanted to teach the child the value of money. If indeed, the reason why he did not agree with the purchase of the new school bag was because he was selfish or calculative as PW accused him of being, he would not have allowed PW the freedom during the marriage to purchase the 20 or so branded designer handbags and various luxury watches. PW told the court during the trial, the most expensive of luxury watch she had purchased was a Chopard, which cost approximately RM40,000, and the most expensive handbag was a Chanel, which at the time of her purchase, cost approximately RM10,000 to RM12,000.

[40] It is not disputed that when she left the matrimonial home in November 2015, PW had immovable properties in the sum of RM2,165,600 and cash in her bank account in the sum of RM1,038,002.38. It is also not disputed that PW is a housewife and has not been in gainful employment for the duration of the marriage up to the time she left the matrimonial home.

[41] In my view, a selfish or miserly man would not have given his wife properties and cash in such amounts. Additionally, contrary to her pleaded case, she admitted under cross-examination that RH had been generous to her up to the time she left with the matrimonial home, and she considered him to be a generous husband who had provided a comfortable life to both her and their children. Accordingly, I find that PW had failed to prove that RH is a selfish person.

[42] Another allegation against RH is that he is a hot-tempered person who scolds and hits their children, especially the eldest, TJM. However, PW did not provide any evidence in court to prove her allegation.

[43] RH had provided a life of luxury for PW and their sons while they were living in the matrimonial home. PW did not have to work in order to support the household or herself. RH gave her a credit card for which he paid the bills. She also had three cars for her use – a Lexus 350, a Toyota Estima and a Honda Accord. He had provided her with two live-in-maids to assist her with the running of the house and looking after the children, and a driver to drive her and the children.

[44] Both children are the product of this life of luxury. They are privately educated. They went on annual holidays with PW and RH to places such as Disneyland (both in Hong Kong and Tokyo); Japan – skiing in Sendai, Tokyo and Osaka; Australia – Gold Coast, Sydney, Melbourne; and Europe - France, Italy. Their lives and upbringing are in marked contrast to that of RH. Like many self-made multi-millionaires, RH is careful with his money and wants to inculcate the same values in his sons. From the evidence before this court, this difference in parenting style was a source of strife in the marriage. One of PW's complaints against RH, which she said was an example of his love of money and miserly attitude, was that he never took the children to expensive restaurants and private clubs, preferring instead to take them to hawker stalls.

[45] One of the main sources of discord between the parties, is how each party treated their eldest son, TJM. PW says that RH is biased against TJM and favours their younger son, TJT.

[46] TJM is effeminate and wears women's makeup. Both PW and RH are uncomfortable with his feminine traits and say they have talked to him many times about it. With the help of PW's sister, they had sent TJM for Christian counselling, after which he changed for a while. But he had since reverted to his feminine ways and continues to be effeminate to date.

[47] PW also complained that RH did not want to buy TJM a car when she and the children lived in the matrimonial home. RH said that he did not agree to buy TJM a car when he was living at home because there were four cars at home. He said the TJM could use one of the four cars first before he goes overseas to study. If he bought a new car for TJM, the new car would be just left at home when TJM continued his study overseas.

[48] PW said that in contrast RH had bought their younger son TJT a BMW 3 Series when he came back to Malaysia after studying for a year in Canada after PW had left the matrimonial home with both TJM and TJT. TJT was unhappy in Canada and had decided to return to Malaysia after a year to continue his studies.

[49] RH's failure to buy TJM a car was not pleaded by PW as a cause of the breakdown of their marriage. It is trite law that parties are bound by their pleadings: see *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944; [2015] 6 MLJ 1; [2018] 3 AMR 259, FC. Moreover, RH's purchase of the car for TJT was after PW had left the matrimonial home with both children. Hence, it cannot be treated as a cause for the breakdown of the marriage.

[50] As regards her allegation that RH had denied her emotional support and intimacy, RH's case is that PW is the one who had denied him intimacy. PW admitted during the trial that every time that RH tried to be intimate with her in three years leading up to before she left the matrimonial home, she rejected him each and every time. However, she said it was because he had rejected her first.

[51] In addition, PW had pleaded that she had been sleeping on a mattress on the floor in the master bedroom, whilst RH slept on the bed. However, during the trial, the evidence showed that PW had chosen to sleep on the floor because the mattress on which she slept on is an electric mattress that she had bought for about RM12,000 to RM14,000 for health purposes.

Findings

[52] Based on the evidence before this court, I find that PW and RH's marriage had irretrievably broken down.

[53] As held in *Katz v. Katz* and *Ash v. Ash*, it is for this court to decide, looking at the behaviour, personality and character of both the petitioner and the respondent, whether PW cannot be reasonably expected to live with RH. Although I find that PW had failed to prove on a balance of probabilities the allegations that she had made of RH's unreasonable behaviour, after more than 20 days of observing both PW and RH in court, particularly the stark differences in their personalities and characters and the palpable acrimony between them, I find that they cannot be reasonably expected to live with one another.

[54] As PW has failed to prove on a balance of probabilities her allegations of unreasonable behaviour against RH, I do not allocate any responsibility on either party for the breakdown of the marriage.

[55] Accordingly, based on the finding that the marriage between PW and RH had irretrievably broken down, this court hereby grants PW's petition for judicial separation.

RH's Cross-Petition For Dissolution Of Marriage

[56] RH had sought in his cross-petition for the marriage to be dissolved.

[57] Section 106(1) of the LRA stipulates that except for dissolution of a marriage under ss. 51 and 52 of the LRA, a party can only file a petition for divorce after reference to a conciliatory body and that body had certified that it had failed to reconcile the parties, unless it falls within any of the exceptions in paras. (i) to (vi) of s. 106(1). Dissolution of marriage under s. 51 of the LRA is on the ground that one spouse had converted to Islam, and dissolution of marriage under s. 52 is by mutual consent through the filing of a joint petition for divorce.

[58] RH did not rely on any particular section of the LRA in his cross-petition for the dissolution of the marriage. It is clear that neither PW nor RH had converted to Islam and the cross-petition is not by mutual consent of the parties. Thus, the cross-petition for divorce cannot fall within either s. 51 or s. 52 of the LRA.

[59] In his cross-petition, RW did not plead any of the exceptions in s. 106(1). Neither did he seek dispensation from this court from reference to the marriage tribunal under s. 106(1)(vi) of the LRA prior to filing his cross-petition for divorce.

[60] For this reasons, RH's cross-petition for the dissolution of the marriage is dismissed.

Maintenance For PW

[61] This court is empowered under s. 77(1)(b) of the LRA to order a man to pay maintenance to his wife when granting a decree of judicial separation. Section 77(1)(b) of the LRA reads:

> 77. Power for court to order maintenance for spouse
>
> (1) The court may order a man to pay maintenance to his wife or former wife:
>
> (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;

[62] This court's power to order a man to pay maintenance to his wife is purely discretionary. Section 78 of the LRA requires this court to assess the amount of maintenance to be paid, if any, by RH to PW primarily on the "means and needs of the parties". The courts have time and again held that in assessing the quantum of maintenance, a judge must take into account the means and the needs of the parties. And what amounts to reasonable maintenance depends on the facts and circumstances of each case: see *Parkunan Achulingam v. Kalaiyarasy Periasamy* [2004] 7 CLJ 175; [2004] 6 MLJ 240; [2004] AMEJ 0275; *Dr Shameni Pillai PB Rajedran v. Dr S Arulselvam Sanggilly & Anor* [2011] 6 CLJ 782; [2010] AMEJ 0290.

[63] Section 78 also states that a court in making such an assessment must have regard to the degree of responsibility which it apportions to the husband and wife for the breakdown of the marriage. However, a court shall not have regard to the proportion such maintenance bears on the income of the husband or wife. Section 78 reads:

> Assessment of Maintenance
>
> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.

[64] The law is settled that a court in assessing the amount of maintenance must take into account the wife's actual needs and not her "wants": see *CCKY v. CCT* [2021] 5 CLJ 693; [2021] 9 MLJ 518; [2020] AMEJ 0777. Hence, in this instant case, although RH is a man of considerable means and PW is

not working, s. 78 of the LRA expressly provides that the parties' means and needs are the primary basis of the assessment, "regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be".

[65] Additionally, under s. 78 of the LRA, apart from the means and needs of the parties, a court in determining the amount of maintenance, must also have regard to the degree of responsibility which this court had apportioned to each party for the breakdown of the marriage. Nonetheless, as I did not apportion any responsibility on either PW or RH for the breakdown of the marriage, the only factor for this court's consideration in determining the amount of spousal maintenance for PW is the means and needs of the parties.

[66] How much maintenance is PW seeking for herself? In para. 18(4) of the JS petition, PW prayed for a "reasonable sum" per month as maintenance for herself.

[67] Under ss. 101 and 102 of the Evidence Act 1950 the burden of proof is on PW who is the party claiming for the maintenance. She must prove what amounts to a "reasonable sum" that she has prayed for as her monthly maintenance.

[68] In her application for ancillary relief, PW said that she needs maintenance of RM40,000 per month for herself and both children. In her examination-in-chief, PW testified that she needs maintenance of at least RM25,000. But the total of PW's itemised expenses was only RM20,957.

[69] Learned counsel for PW, Mr Balwant Singh Sidhu, submits that the "reasonable sum" is RM25,000. Whereas learned counsel for RH, Mr Peter Ling, submits that the "reasonable sum" is RM10,000 since PW did not provide receipts for all the expenses claimed – she only provided some receipts for her utility bills, car insurance and road tax, and car service charges. She did not provide receipts for her petrol, toll, parking, personal grooming and entertainment. Mr Ling cited the case of *Poonageswari P Krishnan v. Bailand Govindaham* [2019] 1 LNS 688; [2019] MLJU 448; [2019] AMEJ 0551 ("*Poonageswari Krishnan*"), where the High Court held that it was unable to conclude whether the amount claimed by the wife is a fair and reasonable amount as maintenance and whether the wife is undeniably in need of such maintenance due to her failure to itemise her monthly expenses and to produce receipts or documentary proof to substantiate her claim for maintenance.

[70] In my view, PW's failure to provide all the receipts for all the items she had listed is not fatal to her claim. Although she did not provide all the bills and receipts for all the items, which she said is her monthly expenses, unlike in the petitioner in *Poonageswari Krishnan*, PW did itemise her monthly expenses in her witness statement. As I had held in *Nur Syarafina Sa'ari v. Kerajaan Malaysia & Ors* [2019] 9 CLJ 246; [2019] 12 MLJ 741; [2018] AMEJ 1023, citing Mahadev Shankar J's (as he then was) decision

in *Overseas Investment Pte Ltd v. Anthony William O'Brien & Anor* [1988] 2 CLJ 238; [1988] 2 CLJ (Rep) 82; [1988] 3 MLJ 332 a court recognises that it is unrealistic to expect a claimant to collect and file all bills and receipts with a view to bringing a claim. I said in para. 24 of the judgment:

> [24] As regards the assessment of damages, the court recognises that it is unrealistic to expect a claimant to collect and file all bills and receipts with a view to bringing a claim. As long as there is oral testimony to support the expense and the expense can be reasonably expected to be incurred due to the circumstances of the case, the courts have allowed the claim for special damages: see *Nurul Husna* (*supra*); *Overseas Investment Pte Ltd v. Anthony William O' Brien & Anor* [1988] 2 CLJ 238; [1988] 2 CLJ (Rep) 82; [1988] 3 MLJ 332. Shankar J (as he then was) in *Overseas Investment Ltd* remarked:
>
> > At this juncture, I would observe that it must be self-evident that it would be no easy matter for a housewife to produce at the drop of the sheriff's hat, individual receipts for each item of household furniture acquired over a lifetime of wedlock. If the registrar's approach is correct, then it behoves [*sic*] every Malaysian housewife to beware and immediately start a special file of receipts for household goods.

[71] Furthermore, as the Court of Appeal held in *Sivanes Rajaratnam v. Usha Rani Subramaniam* [2002] 3 CLJ 300; [2002] 3 MLJ 273; [2002] 3 AMR 2729 "no one keeps an account, indeed no one should, as a marriage is not a business venture."

[72] In assessing the amount of spousal maintenance payable, this court must take into account not just the means of the husband and the needs of the wife. It must also take into account the means of the wife and the needs of the husband.

[73] Under cross-examination, PW revealed that she has the means to earn and maintain herself independent of RH. She had sold the two cars that she had taken with her when she left the matrimonial home – the Honda Civic and the Toyota Estima for the sum of RM145,000. She had also incorporated a company, Harta XXXXX Sdn Bhd, as her vehicle for carrying out real estate business. She had over the years purchased numerous properties in Cyberjaya for investment and rental purposes – on which she continued to collect rent after she had left the matrimonial home.

[74] During the trial, she was asked by Mr Ling whether she had a job, PW replied that she earned commissions from introducing her friends to buy things including properties. One of the commissions she earned was RM20,000 from a property in Desa Park City that she had helped to sell. She also said that she earned commissions in helping her brother and his colleague find tenants for their properties in Cyberjaya, and was earning commissions from investments that she had made through a Mr Richard Lam.

[75] PW informed this court that after she left the matrimonial home, she had purchased a Perodua Myvi car for TJM; spent RM4,645 on Fitlien Health Products and invested RM36,000 in Allianz Saverplus. She had travelled to Turkey in March 2019 and had spent approximately RM8,000 to RM9,000 on the trip. She had also paid RM77,620 for a columbarium for her mother from Nirvana Funeral and Memorial Service because her mother was worried about the Covid-19 pandemic.

[76] I agree with learned counsel for RH that these purchases and expenditures show that PW has the means to maintain herself, including going on overseas trips, from the rental that she receives from their joint properties, the commissions she earns and the monthly maintenance that RH had paid her after she had left the matrimonial home in 2015. Based on her testimony, PW's main expenditure is TJM's living expenses and education fees in Australia. However, as ordered by this court (see Part C of this judgment) it is RH who will bear all such costs until TJM completes his tertiary education.

[77] Additionally, based on the division of the matrimonial assets ordered by this court (see Part D below), PW will receive approximately RM67 million in cash, which together with amount of monthly maintenance ordered, which in my opinion, would be more than sufficient to meet her needs and for her to be maintained in the manner to which is accustomed to. Interest at the rate of 3.5% per annum on RM67 million amounts to RM2,010,000 per year or RM167,500 per month.

[78] As for RH, he was already 56 years old at the time of the trial. His source of income as a day trader is not consistent and he would be expected to retire when he reaches 60 years or a few years thereafter. Pursuant to the order of this court, RH is responsible for supporting both children of the marriage until they complete their tertiary education. Additionally, based on the division of matrimonial assets ordered by this court, between 30% to 50% of the assets and bank balance in his name, and the monies in his EPF account will be transferred to PW. He will have to support the children until they finish their tertiary education and support himself with the balance of his assets.

Findings

[79] Accordingly, after taking into account the means and the needs of both PW and RH and the amount itemised by PW as monthly expenses, I find that a reasonable sum of maintenance payable by RH to PW is RM20,000.

[80] PW is also claiming arrears in spousal maintenance from the time she left the house until November 2020. I have allowed PW's arrears in maintenance for 61 months from November 2015 until November 2020 at

RM20,000 per month after deducting the sums that she had received as maintenance from RH and the rental income she had received from their joint properties for the same period.

[81] Based on the calculation in the table below, I find that the arrears of maintenance payable by RH to PW from November 2015 until November 2020 is RM525,500.

(A) Amount of Spousal Maintenance	(B) Minus	Spousal Maintenance Received	Total Arrears
RM1,220,000.00	-	RM694,500.00	RM525,500.00

(i) Arrears in spousal maintenance from Nov 2015 to Nov 2020

Spousal Maintenance	Amount
Spousal maintenance payable from Nov 2015 to Nov 2020 (RM20,000 per month x 61 months)	RM1,220,000.00

(ii) Spousal maintenance received from Dec 2015 to Nov 2020

Period	Rental Income received	Maintenance received from RH	Amount
Dec 2015	RM11,500	0	RM11,500.00
Jan 2016 - Dec 2016	RM48,000	RM235,000	RM283,000.00
Jan 2017 - Dec 2017	RM96,000	RM124,000	RM220,000.00
Jan 2018 - Dec 2018	RM96,000	RM 84,000	RM180,000.00
Jan 2019 - Dec 2019	RM96,000	RM 84,000	RM180,000.00
Jan 2020 - Nov 2020	RM88,000	RM 77,000	RM165,000.00
		Total	RM1,039,500.00
Less: (i) Child maintenance for TJT from Nov 2015 - August 2016 (RM5,000 per month x 8 months)			(RM45,000.00)
(ii) Child maintenance for TJM from Nov 2015 to Oct 2020 (RM5,000 per month x 60 months)			(RM300,000.00)
Total Amount of spousal maintenance received by PW from Dec 2015 to Nov 2020:			RM694,500.00

A Ang Pow for Chinese New Year

[82] PW is also seeking for payment of RM70,000 as ang pow for every Chinese New Year ("CNY") because RH had given her the said sum as an ang pow for every CNY when she lived in the matrimonial home.

B **[83]** In *Yap Kim Lew v. Peh Thye Meng* [2013] 1 CLJ 441, the petitioner wife had sought from the High Court for an order that the husband continues to pay her an ang pow in the sum of RM5,000 for every CNY. Umi Kalthum Abd Majid J (as she then was) dismissed the wife's application for the payment of ang pow to continue after the divorce. Her Ladyship held that
C the payment of the ang pow was "understandable, but not necessary", if the parties remained married and celebrated CNY together.

[84] I agree with Her Ladyship's finding that paying of the ang pow from a husband to a wife is understandable, but not necessary, when a married couple are living together and celebrating CNY together. On the same note,
D once the couple is judicially separated or divorced, live in separate homes and no longer celebrate CNY together, paying of ang pow for CNY by the husband to the wife is neither understandable nor necessary. Accordingly, PW's application for RH to continue paying her the sum of RM70,000 as ang pow for Chinese New Year after she had left the matrimonial home is
E dismissed.

Child Maintenance

[85] At the time of the trial, both TJM and TJT were pursuing their tertiary education. There is no issue about TJT's education or living expenses. He has been living with RH since his return from Canada. RH fully
F pays for TJT's upkeep and his education.

TJM's Fees For Foundation Course And University

[86] On 21 October 2019, on PW's application, this court had ordered RH to reimburse PW for TJM's education fees, particularly his foundation
G course fee and his university fees at the University of New South Wales ("UNSW"). RH has complied with the court order and has reimbursed PW the total sum of AUD32,805.39 (equivalent to RM110,371.82) for TJM's foundation course and another AUD76,210.97 (equivalent to RM317,488.19) for his university fees.

H **[87]** According to PW, TJM was required to re-sit one semester as he failed his Introductory Japanese in term three of Year 2019. TJM is expected to complete his degree in May 2021.

I

TJM's Living Expenses And Rental In Australia

[88] PW is seeking for reimbursement from RH of TJM's living expenses amounting to AUD45,100 up to July 2020 (equivalent to RM139,810) and rental expenses amounting to AUD90,000 (equivalent to RM279,000), which amount totals up to AUD135,100 (equivalent to RM418,810).

[89] PW claims that she had given TJM AUD1,100 per month for his living expenses from February 2017 to June 2020, which amounts to the sum of AUD44,000.

[90] RH has accepted that this sum of AUD44,000 for TJM's living expenses from the period from February 2017 to June 2020 as reasonable.

[91] As for TJM's rental for the period from February 2017 to June 2020, PW claims a reimbursement for the sum of AUD79,946.72. The breakdown of TJM's rental claimed is as below:

Period	Rental per week (AUD)	Total Rental (AUD)
27.02.2017 - 13.07.2017	316.67	5,066.72
14.07.2017 - 14.07.2018	485.00	25,220.00
15.07.2018 - 14.07.2019	466.00	24,232.00
15.07.2019 - 14.07.2020	489.00	25,428.00
	Total	79,946.72

[92] Based on online listings of student accommodation in Sydney, RH has agreed to pay TJM's rental up to a maximum of AUD350 per week, which totals up to the sum of AUD59,666.72 (equivalent to RM184,966.83). His solicitors in their letter dated 24 June 2020 to PW's solicitors stated that the online listings shows that TJM could easily rent a comfortable room for AUD350 a week.

[93] PW disagrees. In her supplementary witness statement (WS-PW1D), PW stated that the said online listings are for individual rooms in apartments, with shared bathrooms, shared by up to seven people. She said that TJM, who is effeminate, is not comfortable sharing with so many people because he is afraid of being bullied. PW exhibited a newspaper article where The Sydney Morning Herald had interviewed TJM in a news article entitled "*She disappeared: How high-flying Ashleigh crashed back to earth*." In the article, TJM explained how he was nearly forced to pay double of his quarterly rent, weeks in advance. He explained how he feared of being evicted and finally moved out after agreeing to pay a "vacate fee".

[94] Learned counsel for RH submits that PW's claim of TJM's fear of being bullied and attracting unwelcomed attention are bare allegations which remain unsubstantiated. Mr Ling says that PW's reasoning for TJM's rental of the studio flat is unjustified because there have been no incidences of him being bullied because of his feminine traits.

[95] The brochure of the studio flat rented by TJM, exhibited by PW, shows that the flat is located in a fit-for-purpose students' accommodation run by IGLU. Although termed a "studio flat", it is actually a one-room flat with a small kitchen area and a small ensuite bathroom. The accommodation is 6km away from the University of New South Wales ("UNSW"), where TJM studies, and ½km away from some Malaysian restaurants and 1km away from Sydney's Grand Central Station. Whereas the rooms in the online listings proposed by RH is shared with up to seven people and are far away from the university for *eg*, the listing at Padstow is 25km away from UNSW.

Findings

[96] It is settled law that a court has to apply the test of reasonableness in determining the amount of maintenance that a father must pay for his children: see *Celvambigai S Thirucelvam v. Pandian Subramaniam* [2015] 6 CLJ 225; [2015] AMEJ 664; [2015] MLJU 2093; and s. 92 of the LRA. In *Celvambigai Thirucelvam*, Lee Swee Seng J (as he then was) held that a judge hearing a wife's claim for maintenance of the children in a divorce petition is entitled to follow the same investigative approach as provided in r. 67 of the Divorce and Matrimonial Proceedings Rules 1980 in an application for financial or other relief.

[97] After taking into account the facts, this court finds that the rental paid for TJM's accommodation in Australia is reasonable in the circumstances. As stated in para. [90] above, RH has accepted that the amount of AUD44,000 claimed by PW for TJM's living expenses in Australia as reasonable.

[98] It was held in *Celvambigai Thirucelvam* that whilst both parents have the duty under s. 92 of the LRA to maintain the children of the marriage, s. 93 of the LRA stipulates that it is the husband who has a primary duty to maintain the children. As stated in s. 93(2) of the LRA, the wife's duty to maintain the children is only secondary: her role is supportive and supplementary to that of the husband's.

[99] Accordingly, this court hereby orders that RH reimburses PW the full sum paid for TJM's rental during his undergraduate degree in Australia, together with his living expenses in Malaysia and in Australia for the period from November 2015 to July 2020. Also that he reimburses her the sum of RM5,000 per month for TJT for the eight months that he was living with PW after they left the matrimonial home in November 2015 until August 2016.

[100] The amounts are calculated in the table below:

TJM		
(a) Living expenses with PW in Malaysia: November 2015 – February 2017 (RM5,000 per month x 16 months)		RM80,000.00
(b) Living expenses in Australia: March 2017 – July 2020) (RM5,000 per month x 44 months)		RM220,000.00
(c) Rental for Accommodation in Australia:		
Rental Period	Amount	
27 Feb 2017 to 13 July 2017 (AUD 316.67 x 16 weeks)	AUD 5,066.72	
14 July 2017 to 14 July 2018 (AUD485.00 x 52 weeks)	AUD25,220.00	
15 July 2018 to 14 July 2019 (AUD 466.00 x 52 weeks)	AUD24,232.00	
15 July 2019 to 14 July 2020 (AUD 489.00 x 52 weeks)	AUD25,428.00	
Total:	AUD79,946.72	RM247,834.83
LESS: Child maintenance for TJM paid by RH to PW from November 2015 to Oct 2020 (RM5,000 per month x 60 months)		(RM300,000.00)
TOTAL:		RM247,834.83
TJT		
November 2015 to August 2016 (RM5,000.00 per month x 8 months)		RM45,000.00
Total arrears in child maintenance		RM292,834.83

[101] Therefore, in respect of child maintenance, RH is ordered to pay PW:

(i) TJM's living expenses at the rate of RM5,000 per month and his university fees and rental at the rate of not more than AUD489 from August 2020 until the completion of his undergraduate degree; and

(ii) the total amount arrears in child maintenance for the period from November 2015 to July 2020 in the sum of RM292,834.83.

Division Of Matrimonial Assets

[102] When granting the decree of judicial separation, a court is empowered under s. 76(1) of the LRA to order the division of assets acquired during the marriage or the sale of such assets and the proceeds of sale divided between the husband and wife. Section 76(5) states that for purposes of s. 76:

> references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

[103] Pursuant to s. 76(2) of the LRA, as amended by the 2017 Amendment Act, a court in exercising its power to order the division of matrimonial assets, must have regard to the following factors.

(i) the extent of the contributions made by each party towards the acquisition of the property or for payment of expenses for the benefit of the family;

(ii) the extent of contributions by the other party, who did not acquire the assets, to the welfare of the family by looking after the home or caring for the family;

(iii) any debts owing by either party which were contracted for their joint benefit;

(iv) the needs of minor children, if any, of the marriage;

(v) the duration of the marriage.

[104] Section 76(2) states that subject to these considerations, the court shall incline towards equality of division.

[105] PW and RH have amassed a large amount of assets during their 18-year marriage. These assets consist of immovable properties, a wholly owned private limited company, motor vehicles, monies in RH's EPF account, shares in public listed companies, and monies in bank accounts.

[106] The assets that were the subject matter of the trial are as follows:

(i) Matrimonial home:

(a) Bungalow in Sierramas, Sungai Buloh.

(ii) Immovable properties in the joint names of PW and RH:

(a) A bungalow in Valencia, Sungai Buloh ("No. 3A, EB").

(b) A bungalow in Valencia, Sungai Buloh ("No. 5, EB").

(c) A three-storey terrace house in Symphony Hills, Cyberjaya ("Schubert").

(d) A semi-detached house in Symphony Hills, Cyberjaya ("Beethoven 1").

(e) A semi-detached house in Symphony Hills, Cyberjaya ("Beethoven 1A").

(f) Immovable properties in the PW's name:

(1) Apartment ("A-05-02 DP").

(2) Apartment ("B-13-11 SR").

(3) Apartment ("B-17-15 SR").

(4) Apartment ("B-19-03A SA").

(5) Apartment ("B-19-08 SA").

(iii) Properties in the joint names of PW and RH, which have been sold prior to the filing of this petition:

(a) Bungalow in Valencia, Sungai Buloh ("No. 61, ES").

(b) Bungalow in Valencia, Sungai Buloh ("No. 5, EP").

(iv) Shareholding in a Malaysian incorporated private limited company ("ATSB) – RH holds 90% and PW holds 10% of the issued share capital in ATSB. ATSB is a property investment company. It is the registered owner of four factory lots ("Lot 1", "Lot 2", "Lot 3" and "Lot 3A"), which at the material time were tenanted.

(v) Shareholding in a company incorporated in the British Virgin Islands ("BEGL"). RH has 90 shares and PW10 shares in BEGL.

(vi) Bank accounts in RH's sole name and PW's sole name and in their joint names.

(vii) In the sum of RM715,799.91 in RH's EPF account as of 2020 *ie*, before he withdrew the said monies from the account.

(viii) At the time of the breakdown of the marriage, PW and RH owned four cars. They are (i) a Porsche Carrera, (ii) a Lexus RX350, (iii) a Toyota Estima and (iv) a Honda Civic. The Porsche Carrera and the Lexus RX350 were registered in the RH's name. The Toyota Estima and the Honda Civic were registered in the PW's name.

Immovable Properties

[107] In May 2018, after the trial of this petition had commenced, the parties reached an agreement on the value of the immovable properties.

[108] The agreed valuations of the properties are contained in exhs. "P1" and "P2", both of which are reproduced below:

- Exhibit "P1":

A	Residential Properties	Agreed Valuation (RM)
1.	Matrimonial home	5,500,000.00 (Land: 3,500,000.00) (House: 2,000,000.00)
2.	No. 3A EB	4,100,000.00
3.	No. 5 EB	4,100,000.00
4.	Schubert	1,080,888.00
5.	Beethoven 1	1,850,000.00
6.	Beethoven 1A	2,200,000.00
	TOTAL	18,930,888.00

B	Factory Lots owned by ATSB	Agreed Valuation (RM)
7.	Lot 1	6,300,000.00
8.	Lot 2	5,400,000.00
9.	Lot 3	5,400,000.00
10.	Lot 3A	5,900,000.00
	TOTAL	23,000,000.00

Exhibit "P2"

C	PW's Properties	Agreed Valuation (RM)
1.	A-05-02 DP	300,000.00
2.	B-13-11 SR	280,000.00
3.	B-17-15 SR	450,000.00
	TOTAL	1,030,000.00

D	PW's Properties	Agreed Valuation (RM)
1.	B-19-03A SA	61,200.00
2.	B-19-03A SA	57,200.00
	TOTAL	118,400.00

[109] The parties jointly owned the properties in item E of exh. "P2". The properties had been sold for the total sum of RM8,050,000. RH had given PW the sum of RM80,000 from the proceeds of sale.

E	Joint Properties	Sale Price (RM)
1.	No. 5, EP	6,300,000.00
2.	No. 61, ES	1,750,000.00
	TOTAL	8,050,000.00

Bank Accounts

[110] Details of the bank accounts in RH's sole name or controlled by RH are in the table below:

No.	Bank/Account No.	2015 (RM)	2020 (RM)
1.	Maybank xxxx xxxx 0693	0.00	0.00
2.	Maybank xxxx xxxx 9897 (FD 0013 & 0014)	20,000,000.00	17,000,000.00 3,000,000.00
3.	Maybank xxxx xxxx 6933	377,771.23	677,773.05
4.	Maybank xxxx xxxx 5657	2,060,722.10	429,381.14
5.	Public Bank xxxxxx 9328	14,009,932.85	495,454.52 14,000,000.00
6.	Public Bank xxxxxx 4229	63,000,000.00	33,000,000.00 30,000,000.00
7.	Public Bank xxxxxx 2618	10,000,000.00	8,000,000.00 5,000,000.00
8.	Maybank xxxx xxxx 7732	2,025,443.06	7,524,829.19
9.	Maybank xxxx xxxx 6301	48,000,000.00	40,000,000.00 3,000,000.00 5,000,000.00
10	Maybank Singapore xxxxxx6614	SGD4,968.07 (RM15,230.55 as at 23.11.2015)	SGD4,961.51 (RM15,230.55 as at 31.05.16)
11.	Public Bank Bond dated 23.0 5.2014	12,000,000.00	12,000,000 matured on 10.06.2019, first to PBB xxxxxx5719, then to Affin Bank FD (by way of 2 cheques)
12.	Public Bank xxxxxx 5719	-	8,013,789.49
13.	HSBC Singapore	SGD4,152.883.98 (equivalent to RM12,400,000.00 as at 30.11.2015)	SGD,438,602.62 (equivalent to RM15,000,000.00 as at 31.01.2020)
14.	Maybank xxxxxxxx9042 (ATSB)	1,139,183.47	3,723,609.15
15	Affin Bank xx xxx xxx 7733 and xx xxx xxx 2458		103,149,960.95 (The following sums are accounted for: Item 9: RM40 million Item 2: RM17 million Item 11: RM12 million) Therefore, balance in this account is: 34,149,960.95

16.	Maybank xxxx xxxx 8567 (In RH's mother's name)		3,300,000.00
17.	Maybank xxxx xxxx 6300 (In RH's mother's name)		2,000,000.00
18.	Maybank xxxx xxxx 0690 (Joint Account with TJT)		9,250,000.00
19.	OCBC xxx xxx827-7		3,000,000.00
20.	OCBC xxx xxx764-2		(Already accounted for in item 9)
	TOTAL	185,028,283.20	244,018,630,66

[111] Details of the bank accounts in PW's sole name are below:

No.	Bank/Account No.	2015 (RM)	2020 (RM)
1.	Hong Leong Bank xxxxxx1573	415,062.21 (as at 30.11.2015)	RM356,493.05 (as at 08.07.2020)
2.	Maybank xxxx xxxx 7073	245,606.74 (as at 27.11.2015)	86,636.74 (as at 31.07.2020)
3.	UOB xxxxxx2697	26,605.24 (overdraft) (as at 30.11.2015)	263,502.23 (overdraft) (as at 31.05.2020)
4.	UOB (Flexi-Mortgage) xxxxxx2700	68,829.70 (overdraft)	50,899.46 (overdraft)
5.	UOB xxxxxx7917	120,663.79 (overdraft)	95,071.06 (overdraft)
6.	UOB xxxxxx0243 (Fixed Deposits)	92,732.96 (matured on 28.12.2015)	105,108.40 (matured on 29.06.2020)
		169,939.95 (matured on	191,192.06 (matured 28 October 2016)
		88,303.39 (matured on 28.10.2016)	99,934.37 (matured on 28.10.2020)
7.	CIMB Bank xxxxxx2549	776.02	375,578.05 (overdraft)
8.	CIMB Bank xxxxxx2587	792.50	355,372.19 (overdraft)
9.	Ambank xxxxxxxxx7412	7,341.21 (as at 05.07.2016)	648.79 (as at 31.05.2020)
10.	Ambank xxxxxxxxx7456	Safe Deposit Box Facility	

11. Maybank xxxx xxxx 9564 (Joint Account with PW's mother)		14,647.87 (as at 31.05.2016)	14,694.61 (as at 31.05.2020)
Total	Cash	1,035,202.70	854,708.02
	Overdraft	216,098.73	1,140,422.90

[112] PW also has Yippee Club joint accounts at Maybank with TJM and TJT, which had a balance of RM58,812.65 and RM48,245.97 respectively on 6 May 2015. However, the amounts in these Yippee Club joint accounts have not been included in the calculation of the amount of cash that PW had in her bank accounts when she left the matrimonial home in November 2015.

Shares In PW's Name

[113] RH had purchased shares in public listed companies in PW's name, as listed on p. 12 of the written submissions (part 3 encl. 217) of PW's counsel. RH have traded these shares on the stock exchange. Based on the documents provided during the trial the total proceeds made by RH from the trading of these shares are RM14,109,268.86. These proceeds have been retained by RH.

[114] There were also other shares in PW's name (listed in the table on p. 13 of encl. 217), which the total proceeds from the sale of these shares amounted to RM8,574,211.79.

Analysis

[115] The court's power to order the division of matrimonial assets on the grant of a decree of judicial separation or a decree of divorce is derived from s. 76 of the LRA.

[116] Professor Leong Wai Kum of the National University of Singapore, in her article *Back to the Future: The 2017 Amendments of Power to Divide Matrimonial Assets*, Journal of the Malaysian Judiciary, July [2018] JMJ, said the following as regards s. 76 of the LRA:

> [5] Section 76 is a novel statutory provision within a legal system that traces its genealogy to the common law tradition among legal systems. Its underlying philosophy is sound. It empowers the courts to achieve a measure of equality in the economic status of the spouses as they exit their marital partnership.

[117] Section 76 was amended by the 2017 Amendment Act. The section as amended reads:

> (1) The court shall have power, when granting a decree of divorce or judicial separation, to order the division between the parties of any assets acquired by them during the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

A (2) In exercising the power conferred by subsection (1) the court shall have regard to:

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets or payment of expenses for the benefit of the family;

B (aa) the extent of the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring for the family;

(b) any debts owing by either party which were contracted for their joint benefit;

C (c) the needs of the minor children, if any, of the marriage;

(d) the duration of the marriage,

and subject to those considerations, the court shall incline towards equality of division.

D **[118]** With the amendment, gone is the segregation of matrimonial properties which are acquired by the "joint efforts" of both spouses and those which are acquired by the "sole effort" of one spouse.

[119] Professor Leong is of the view that with the ending of the segregation E of these two categories of matrimonial assets, there is now only one directive to the courts in s. 76 as to how to divide the matrimonial properties. She said:

[12] It follows naturally, with the ending of such segregation of "matrimonial assets" into two separate groups that there is only one directive to the court, in the amended s. 76, of how to divide the matrimonial assets. **The singular directive is that the court should bear** F **all relevant considerations in mind and then, "the court shall incline towards equality of division"** ...

[33] ... **The court's empowerment is such that, at the point of the dissolution of the marital partnership, it is able to give back half, or close to half, of the accumulated property and wealth to each spouse**.

G [34] Each spouse should get back half of the accumulated property and wealth, regardless of who may have been the bread-winner who actually paid for the property.

[35] This is so because the spouses could function optimally as a marital partnership only by dividing their roles. The bread-winner could not have H functioned optimally if not for the other spouse discharging the home-maker and child-carer roles. Or, whatever combination of these roles which suited the couple. How they divide up these roles should not affect their entitlement to a fair share of the accumulated property. A fair share of this property, given that the spouses co-operated as equal partners, should generally be an equal share. (emphasis added)

I

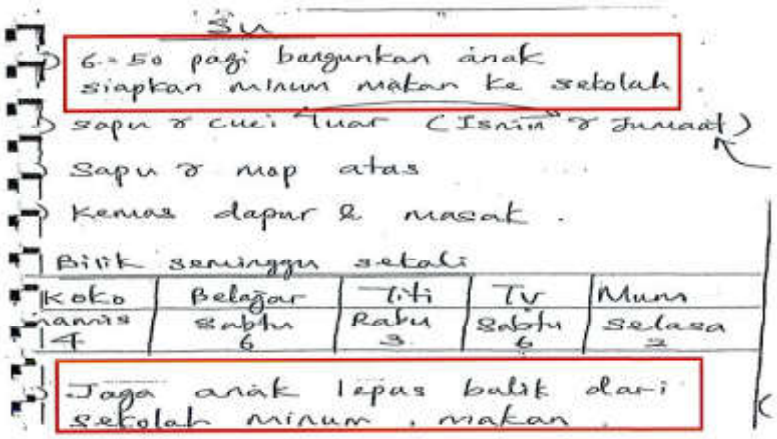
[120] I agree with the views expressed by Professor Leong. Following the amendment of s. 76 of the LRA, this court must look at the matrimonial assets accumulated by the couple as one whole rather than segregate them into two categories: properties acquired jointly by both spouses and properties acquired solely by one spouse.

[121] The new sub-s. 76(2)(aa) of the LRA codifies the courts' power to take into consideration the extent of the contributions made by the spouse, who did not acquire the assets, to the welfare of the family by looking after the home and caring for the family.

[122] In this JS petition, it is not disputed that all the assets were acquired through monetary contribution made by RH and he had paid all the expenses for the benefit of the family.

[123] The battleground before this court is the question of the extent of PW's contribution to welfare of the family, in particular as regards the phrase "by looking after the home or caring for the family" in sub-s. 76(2)(aa) of the LRA.

[124] Learned counsel for PW, Mr Balwant Singh Sidhu, argued extensively that although RH had provided PW with two live-in maids to look after both children, to cook and clean the house, it was PW who managed the maids and supervised their work. Additionally, although she was provided with a driver to drive her and the children, every Friday she had to drive the children to school herself. This was because RH uses the driver on Fridays to drive him to work and to drinks with friends after work. PW had averred in her pleadings it was her who had managed the home and the children, in that she gave the maids their duties and supervised them. Her written instructions to the maids are produced below:



[125] Mr Balwant Singh submitted that PW "even bought recipes and translated them into Malay for the maids to cook."

[126] Whereas learned counsel for RH, Mr Peter Ling, painted a very different picture of PW – that she is a social butterfly who loves to party and play mah-jong with friends, and participate in karaoke competitions: one who had not provided any contribution to the upbringing of the children and the upkeep of the matrimonial home.

[127] As for the matrimonial assets, PW testified that from the beginning of their relationship, RH had treated her as an equal partner in search for suitable investments and had told her that everything they owned belonged to both of them.

[128] Mr Ling submitted that the land for the matrimonial home was built on a piece of land that RH had acquired long before the marriage. He argued that pursuant to s. 76(5) of the LRA since PW did not make any substantial improvements to the matrimonial home – she did not contribute to the purchase of the matrimonial home or the construction of the said home, there should not be any division of the matrimonial home. He submitted in the alternative that if this court is inclined to grant PW a share in the matrimonial home, it should not be more than 10% on the agreed value of the house only but subject to a 20% reduction in the agreed value of RM2 million for the house only. Thus, the value which Mr Ling says that this court should award PW for the matrimonial home is RM160,000 only.

[129] As regards the five properties owned jointly by PW and RH (items 2 to 6 of Part A of the table in para. [108] above) ("joint investment properties"), and the five properties owned by PW alone (detailed in Part C and D of the table in para. [108] above), Mr Ling submitted that the ratio of the direct financial contributions between PW and RH is 21:79. He cited the case of *Shireen Chelliah Thiruchelvam v. Kanagasingam Kandiah; Sureshan Marcandan (Party Cited) (No 2)* [2011] 1 LNS 1167; [2012] 7 MLJ 315; [2012] 2 AMR 156, and *Baheerathy Arumugam v. V Gunaselan V Visvanathan* [2013] 1 CLJ 954; [2012] 6 MLJ 868; [2012] 5 AMR 771, where the High Court granted the petitioner wives a 35% and 30% share in the properties acquired during the marriage based on the respective wives contribution towards the welfare of the family by looking after the home and caring for the family. He said the same could not be said for PW, whose contribution was minimal compared to other full-time homemakers.

[130] Premised on these arguments, Mr Ling submitted that this court should award PW only 25% share of the value in the five joint investment properties.

[131] As regards the two joint properties that were sold prior to PW leaving the house (detailed in Part E of the table in [108] above), Mr Ling argued that PW's claim for both properties should be dismissed because this court should only be concerned with the division of matrimonial property that is left at the time the order is made.

[132] Counsel for PW, Mr Balwant Singh Sidhu disagrees. He submitted that there is no arbitrary cut-off point in law – all of the assets acquired by the parties during the marriage are available for division by this court, up to the grant of a decree. He cited as authority the Federal Court's decision in *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209; [2008] 6 AMR 177; [2009] 1 MLJ 21, where Zaki Azmi PCA and Arifin Zakaria FCJ delivering the judgment of the Federal Court held:

> The duty of the court is to interpret and apply the law. The words used in s.76(1) and (3) of the Act are clear *ie*, an order for division of matrimonial assets is limited to **the time when granting** a decree of divorce or judicial separation. (emphasis added)

Findings

[133] Having considered the evidence before this court including the testimonies of the parties, in my view, PW's contribution to the welfare of the family lies somewhere in the middle: in that she did contribute to the welfare of the family and the upbringing of the children but not as much as her counsel makes it out to be and not as negligible as RH's counsel contends.

[134] Courts have long recognised that more often than not in divorce and judicial separation proceedings, each spouse would try to paint the worse possible picture of the other spouse. As Warrington LJ observed a century ago in the English case of *B v. B* [1924] P 176:

> My experience in such cases certainly teaches me that such incidents usually are exaggerated in the evidence, for this reason, that one does not know all the surrounding circumstances. We cannot know them all. The deponents who deal with them give special importance to certain particular happenings, and do not give importance to other surrounding circumstances or other incidents which might deprive the first of a great deal of the effect which at first sight they seem to have.

[135] Another factor that a court has to take into account in deciding on the division of matrimonial property are the debts owing by either party for their joint benefits: see s. 76(2)(b) of the LRA. RH did not provide any evidence of the debts owed by him for their joint benefit. PW had provided evidence as to her various overdrafts. But she did not plead or provide any evidence that the overdrafts were for her and RH's joint benefit. Hence, this court did not take into account such debts in determining the division of the matrimonial property.

[136] Pursuant to s. 76(2) of the LRA, in deciding on the division of the matrimonial assets between PW and RH, this court is required to "incline towards equality of division" after taking into consideration the factors in s. 76(2).

[137] For the reasons discussed above, this court took into account, RH's financial contributions towards the acquisition of the properties and the expenses for the benefit of the family, PW's contributions to the welfare of the family "by looking after the home or caring for the family", and the duration of the marriage.

[138] After the taking into account these considerations, this court had divided the matrimonial assets between PW and RH, not half but as close to half as this court in its view is fair and reasonable in the circumstances. In doing so, this court did not divide each and every asset down the middle but instead strived towards equality of division of the couple's whole basket of assets – the division of all the assets in the basket is at the ratio of 44:56 for PW and RH respectively. As Professor Leong opined in her article, courts are empowered under s. 76 of the LRA to give to each spouse "half or close to half" of the accumulated matrimonial assets.

[139] Therefore, this court hereby orders that the matrimonial assets between PW and RH be divided in the ratio set out in the table below.

	Matrimonial Assets	PW (%)	RH (%)
1.	Matrimonial Home (Item A1 in Exhibit P1) - House only at agreed value of RM2 million	50	50
2.	Joint Investment Properties (Item A2 - A6 in Exhibit P1)	40	60
3.	PW's Properties (Item C in Exhibit P2)	60	40
4.	Net value of shareholding in ATSB - Parties to appoint a valuer to value the shares in ATSB. If the parties cannot agree on a valuer, the Court will appoint a valuer.	30	70
5	Sale proceeds of the 2 properties that had been sold prior to filing of this JS petition (Item E in Exhibit P2) less loan repayments, expenses and the sum of RM80,000.00 already paid by RH to PW.	50	50
6.	Balance in RH's EPF Account	30	70
7.	Sale proceeds of the shares held in PW's name	30	70
8.	Motor vehicles	40	60

9.	Bank Accounts:		
(a)	Maybank Account No. xxxxxxxx5657 (Joint Account) of the sum of RM2,060,722.00 as at 23.11.2015	50	50
(b)	Amounts in other bank accounts in RH's sole name as on at the date of judgment:	30	70
(c)	Amounts in other bank accounts in PW's sole name as on at the date of judgment:	70	30

[140] Both parties are dissatisfied with the ratios that this court had decided in the division of the matrimonial assets and have filed their respective appeals to the Court of Appeal against this court's decision. Like *Goldilocks and the Three Bears*, PW thinks the division to her is too little, whereas RH thinks it is too much. However, unlike Goldilocks, it is unlikely that either of them will find any ratio decided by this court in the division of the assets to be just right.

Decision

[141] Accordingly, for the reasons above, this court makes the following orders:

(i) A decree of judicial separation between PW and RH is hereby granted.

(ii) The following is hereby ordered in respect of maintenance and the division of matrimonial assets between PW and RH:

(a) RH to pay PW spousal maintenance in the sum of RM20,000 per month beginning from December 2020.

(b) RH to pay PW arrears in spousal maintenance in the sum of RM525,500.

(c) RH to pay PW arrears in child maintenance in the sum of RM247,834.83.

(d) RH shall pay to PW, TJM's living expenses at the rate of RM5,000 per month and his university fees and rental at the rate of not more than AUD489 per week from August 2020 until the completion of his undergraduate degree.

(e) The matrimonial assets are to be divided between PW and RH in the following percentage ratios:

No.	Matrimonial Assets	PW (%)	RH (%)
1.	Matrimonial Home (Item A1 in Exhibit P1) - House only at agreed value of RM2 million	50	50
2.	Joint Investment Properties (Item A2 - A6 in Exhibit P1)	40	60
3.	PW's Properties (Item C in Exhibit P2)	60	40
4.	Net value of shareholding in ATSB - Parties to appoint a valuer to value the shares in ATSB. If the parties cannot agree on a valuer, the Court will appoint a valuer.	30	70
5.	Sale proceeds of the 2 properties that had been sold prior to filing of this JS petition (Item E in Exhibit P2) less loan repayments, expenses and the sum of RM80,000.00 already paid by RH to PW.	50	50
6.	Balance in RH's EPF Account	30	70
7.	Sale proceeds of the shares held in PW's name	30	70
8.	Motor vehicles	40	60
9.	Bank Accounts:		
(a)	Maybank Account No. xxxxxxxx5657 (Joint Account) of the sum of RM2,060,722.00 as at 23.11.2015	50	50
(b)	Amounts in other bank accounts in RH's sole name as at the date of judgment:	30	70
(c)	Amounts in other bank accounts in PW's sole name as at the date of judgment:	70	30